



DAC

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Applicant(s): Thomas W. Hagler

RECEIVED

Assignee: Advanced Photometrics

AUG 19 2004

Title: Method and Apparatus for Radiation Analysis and Encoder

OFFICE OF PETITIONS
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Application No.: 09/848,614

Filing Date: May 3, 2001

AUG 26 2004

Examiner: Unknown

Group Art Unit: 2877

Docket No.: SPEC.001US2
(formerly M-10489-1P US)

Conf. No.: 6010

TECH CENTER 2800

San Francisco, California
August 11, 2004

Mail Stop Petitions
COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

TRANSMITTAL FOR SUPPLEMENTAL DECLARATION

Dear Sir/Madam:

A Petition for Revival of Abandoned Application under 37 C.F.R. §1.137(b) together with a Declaration by the undersigned attorney were submitted to the Office of Petitions on May 13, 2004. The Petition was granted on May 26, 2004. A copy of the Decision granting the petition is enclosed, together with a copy of the Petition and Declaration filed on May 13, 2004.

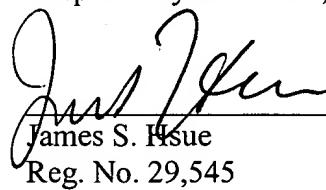
Upon further review of the files, it was discovered that the undersigned attorney had received a copy of the office action earlier than the date mentioned in the May 13, 2004 Declaration. Therefore, to supplement the Declaration, a Supplemental Declaration is enclosed setting forth the dates when copies of the office action were received, and the reasons why the office action had not been responded to earlier than the actual response date on May 13, 2004.

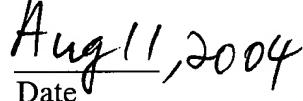
Certificate of Mailing Under 37 CFR 1.8

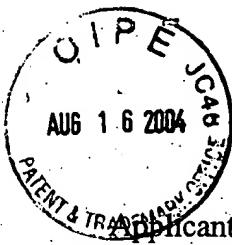
I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail in an envelope address to: Mail Stop Petitions, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on August 11, 2004.

Franklin Dyer

Respectfully submitted,


James S. Hsue
Reg. No. 29,545


Aug 11, 2004
Date



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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AUG 19 2004

OFFICE OF PETITIONS

Applicant(s): Thomas W. Hagler
Assignee: Advanced Photometrics
Title: Method and Apparatus for Radiation Analysis and Encoder
Application No.: 09/848,614 Filing Date: May 3, 2001 *05/26/2004*
Examiner: Unknown Group Art Unit: 2877 *TECH CENTER 2800*
Docket No.: SPEC.001US2 Conf. No.: 6010
(formerly M-10489-1P US)

San Francisco, California
August 11, 2004

Mail Stop Petitions
COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

**SUPPLEMENTAL DECLARATION OF JAMES S. HSUE IN SUPPORT
OF PETITION TO APPLY FOR PATENT UNDER 37 C.F.R. §1.137(b)**

Sir/Madam:

I, James S. Hsue, hereby declare as follows:

1. I am Patent Counsel representing Advanced Photometrics, Inc., the owner of the above-identified application. On May 3, 2001, I mailed the above-referenced application to the United States Patent and Trademark Office for filing.

2. Pursuant to a Revocation of Power of Attorney and Appointment of New Attorney signed on March 21, 2002, power of attorney to me was revoked and granted instead to Mr. L. Lester Wallace.

3. Pursuant to a Power of Attorney by Assignee of Entire Interest signed on January 15, 2003, power of attorney to Mr. L. Lester Wallace was revoked and granted back to me.

4. The law firm Skjerven Morrill LLP where I was employed in January 2003 ceased doing business in February 2003, and I together with other attorneys from Skjerven Morrill LLP formed our present firm Parsons Hsue & de Runtz LLP, which required intense efforts on our part for several months.

5. As a result of the "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. §122(b)(2)(B)(ii) - (iv)", dated June 5, 2003, a number of applications handled by our firm were reviewed in connection with a general review of U.S. applications for which non-publication requests have been made and for which corresponding foreign applications have been filed. In August 2003, I filed for the above-identified application a PETITION FOR REVIVAL UNDER 37 C.F.R. §1.137(f) OF AN APPLICATION FOR PATENT CONSIDERED BY THE OFFICE TO BE ABANDONED FOR FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING because of an international filing on March 6, 2003. As a result of the general review referred to above, I discovered that the above-referenced application was abandoned due to a failure to respond to an office action mailed on July 8, 2002 to Mr. Wallace.

6. In telephone conferences with the examiner Ms. Smith and Mr. Wallace in September 2003, I indicated to both the examiner and Mr. Wallace that I needed a copy of the office action so that it could be responded to as a step needed to revive the application. I also understood from Ms. Smith that her opinion was that since a Petition for Revival had already been filed that no further petition would be necessary. However, Ms. Smith indicated that she would check with a supervisor on this issue. I requested a copy of the office action, but was told that the file was at the Office of Petitions, and that I should attempt to obtain a copy from that Office. A copy of the office action was sent to me by facsimile on October 29, 2003 by the Office of Petitions.

7. Upon my review of the office action sent to me in October, 2003, on its face, the action listed Serial No. 09/844,861 by applicant Padigaru et al. Since this did not match the serial number and applicant of the above-identified application, I took no action to respond to the action. After a number of attempts, I spoke with Ms. Smith on February 17, 2004, who resent the office action to me (on February 12, 2004) and explained that the wrong serial number and applicant name were listed, but that the office action was the correct one.

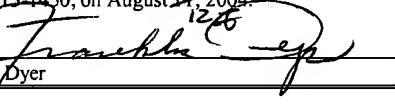
8. After the clarification in February 2004 that the office action received in October 2003 and again in February 2004 was indeed the correct one, applicant and I proceeded to prepare an amendment in response to the office action. This amendment

was mailed with a petition to revive on May 13, 2004, which petition has since been granted.

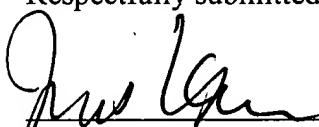
9. Therefore, I believe that the entire delay until May 13, 2004 in filing the required response is unintentional.

Certificate of Mailing Under 37 CFR 1.8

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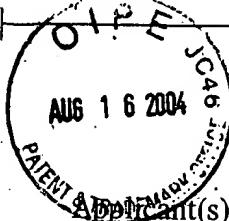

Franklin Dyer

Respectfully submitted,


James S. Hsue

Reg. No. 29,545

8/11/04
Date



655 Montgomery Street, Suite 1800 San Francisco, Ca 94111
 tel 415.318.1160 fax 415.693.0194

May 13, 2004

Applicant(s): Thomas W. Hagler
 Assignee: Advanced Photometrics
 Title: Method and Apparatus for Radiation Analysis and Encoder
 Application No.: 09/848,614
 Examiner: Zandra V. Smith
 Docket No.: SPEC.001US2
 (formerly M-10489-1P US)

COPY

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Filing Date: May 3, 2004

Group Art Unit: 2877 **OFFICE OF PETITIONS**

Conf. No.: 6010

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Franklin Dyer

Mail Stop Petitions
 Commissioner For Patents
 P.O. Box 1450
 Alexandria, VA 22313-1450

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AUG 26 2004

U.S. MAIL CENTER 2000

Dear Sir:

Transmitted herewith are the following documents in the above-identified application:

- (1) Return Receipt Postcard;
- (2) This Transmittal Letter (in duplicate);
- (3) Petition for Revival of an Appl. for Patent Abandoned Unintentionally (2 pages);
- (4) Declaration of James S. Hsue Under 37 C.F.R. 1.137(b) (3 pages);
- (5) Copy of Petition for Revival Under 37 CFR 1.137(f), Return Postcard, Check (4 pages)

Payment of the fee for Fee for Petition for Revival Under 37 C.F.R. 1.137(f) of an Application for Patent Considered by the Office to be Abandoned for Failure to Notify the Office of a Foreign or International Filing was previously submitted to the Office dated August 14, 2003.

Payment for the required petition fee for the Petition for Revival of an Application for Patent Application Abandoned Unintentionally Under 37 CFR 1.137(b) is being filed herewith.

Method of payment:

Fee for Petition for Revival of an Application for Patent Application Abandoned Unintentionally Under 37 CFR 1.137(b). Applicant claims small entity status. \$665.00

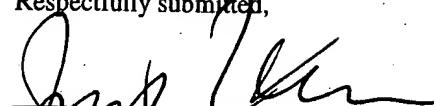
Please charge fee to our Deposit Account No. 502664.

Please charge any additional fees required and credit any overpayment to our Deposit Account No. 502664.

Date: May 13, 2004

COPY

Respectfully submitted,



James S. Hsue
Reg. No. 29,545

PARSONS HSUE & DE RUNTZ LLP
655 Montgomery Street, Suite 1800
San Francisco, CA 94111
(415) 318-1160 (main)
(415) 318-1162 (direct)
(415) 693-0194 (fax)



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MAIL STOP PETITIONS
COMMISSIONER FOR PATENTS
P.O. BOX 1450
ALEXANDRIA, VA 22313-1450

Applicants: Thomas W. Hagler
Assignee: Advanced Photometrics
Title: Method and Apparatus for Radiation Analysis and Encoder
Application No.: 09/848,614
Filing Date: May 3, 2001
Conf. No.: 6010-
Atty Docket No.: SPEC.001US2

ENCLOSED:

1. This Return Receipt Postcard;
2. Transmittal Letter (2 pages);
3. Petition for Revival of an Appl. for Patent Abandoned Unintentionally (2 pages);
4. Declaration of James S. Hsue Under 37 C.F.R. 1.137(b) (3 pages);
5. Copy of Petition for Revival Under 37 CFR 1.137(f), Return Postcard, Check (4 pages);

JSH/fwd

Mailing Date: May 13, 2004

AUG 26 2004

USCH CENTER 2000

O P E R A T I O N S C A P T I O N
AUG 16 2004

COPY

PTO/SB/64 (11-03)

Approved for use through 07/31/2006. OMB 0651-0031

U.S. Patent and Trademark Office; U.S. DEPARTMENT OF COMMERCE
Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

**PETITION FOR REVIVAL OF AN APPLICATION FOR PATENT ABANDONED
UNINTENTIONALLY UNDER 37 CFR 1.137(b)**

Docket Number (Optional)
SPEC.001US2

First named inventor: Thomas W. Hagler

Application No.: 09/848,614

Art Unit: 2877

Filed: May 3, 2001

Examiner: Unknown

Title: METHOD AND APPARATUS FOR RADIATION ANALYSIS AND ENCODER

Attention: Office of Petitions
Mail Stop Petition
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450
FAX: (703) 308-6916

NOTE: If information or assistance is needed in completing this form, please contact Petitions Information at (703) 305-9282.

The above-identified application became abandoned for failure to file a timely and proper reply to a notice or action by the United States Patent and Trademark Office. The date of abandonment is the day after the expiration date of the period set for reply in the Office notice or action plus an extensions of time actually obtained.

APPLICANT HEREBY PETITIONS FOR REVIVAL OF THIS APPLICATION

NOTE: A grantable petition requires the following items:

- (1) Petition fee;
- (2) Reply and/or issue fee;
- (3) Terminal disclaimer with disclaimer fee --required for all utility and plant applications filed before June 8, 1995; and for all design applications; and
- (4) Statement that the entire delay was unintentional.

1. Petition fee

Small entity-fee \$ 665.00 (37 CFR 1.17(m)). Applicant claims small entity status. See 37 CFR 1.27.

Other than small entity - fee \$ _____ (37 CFR 1.17(m))

2. Reply and/or fee

A. The reply and/or fee to the above-noted Office action in the form of Reply _____ (identify type of reply):

has been filed previously on _____
 is enclosed herewith.

B. The issue fee and publication fee (if required) of \$ _____.

has been paid previously on _____
 is enclosed herewith.

[Page 1 of 2]

This collection of information is required by 37 CFR 1.137. The information is required to obtain or retain a benefit by the public which is to file (and by the USPTO to process) an application. Confidentiality is governed by 35 U.S.C. 122 and 37 CFR 1.14. This collection is estimated to take 1.0 hour to complete, including gathering, preparing, and submitting the completed application form to the USPTO. Time will vary depending upon the individual case. Any comments and suggestions for reducing this burden, should be sent to the Chief Information Officer, U.S. Patent and Trademark Office, U.S. Department of Commerce, P.O. 1450, Alexandria, VA 22313-1450. DO NOT SEND FEES OR COMPLETED FORMS TO THIS ADDRESS. SEND TO: Mail Stop Petition, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

If you need assistance in completing the form, call 1-800-PTO-9199 and select option 2.

Under the Paperwork Reduction Act of 1995, no persons are required to respond to a collection of information unless it displays a valid OMB control number.

3. Terminal disclaimer with disclaimer fee

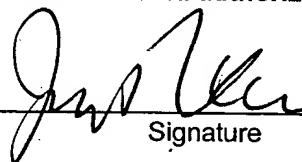
- Since this utility/plant application was filed on or after June 8, 1995, no terminal disclaimer is required.
- A terminal disclaimer (and disclaimer fee (37 CFR 1.20(d)) of \$ _____ for a small entity or \$ _____ for other than a small entity) disclaiming the required period of time is enclosed herewith (see PTO/SB/63).

4. STATEMENT: The entire delay in filing the required reply from the due date for the required reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. [NOTE: The United States Patent and Trademark Office may require additional information if there is a question as to whether either the abandonment or the delay in filing a petition under 37 CFR 1.137(b) was unintentional (MPEP 711.03(c), subsections (III)(C) and (D))].

WARNING: Information on this form may become public. Credit card information should not be included on this form. Provide credit card information and authorization on PTO-2038.

May 13, 2004

Date



Signature

Telephone

Number: 415-318-1162

James S. Hsue

Typed or printed name

655 Montgomery St., Suite

Address

San Francisco, CA 94111

Address

Enclosures: Fee Payment

Reply

Terminal Disclaimer Form

Additional sheets containing statements establishing unintentional delay

Other: _____

CERTIFICATE OF MAILING OR TRANSMISSION [37 CFR 1.8(a)]

I hereby certify that this correspondence is being:

- deposited with the United States Postal Service on the date shown below with sufficient postage as first class mail in an envelope addressed to: **Mail Stop Petition**, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.
- transmitted by facsimile on the date shown below to the United States Patent and Trademark Office at (703) 308-6916.

May 13, 2004

Date

Signature

Franklin Dyer

Type or printed name of person signing certificate

UNITED STATES PATENT AND TRADEMARK OFFICE

SPEC.001/USA

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JUN 03 2004

Parsons Hsue & de Runtz LLP

PARSONS HSUE & DE RUNTZ
655 MONTGOMERY STREET
SUITE 1800
SAN FRANCISCO, CA 94111

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United States Patent and Trademark Office
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Alexandria, VA 22313-1450
www.uspto.gov

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MAY 26 2004

OFFICE OF PETITIONS

In re Application of
Thomas W. Hagler
Application No. 09/848,614
Filed: May 3, 2001
Attorney Docket No. M-10489-1P US

: RECEIVED
: DECISION GRANTING PETITION
: UNDER 37 CFR 1.137 RECEIVED

AUG 26 2004
TECH CENTER 2877

This is a decision on the petition under 37 CFR 1.137(b), filed May 17, 2004, to revive the above-identified application.

The petition is GRANTED.

The above-identified application became abandoned for failure to reply in a timely manner to the non-final Office action mailed July 8, 2002, which set a shortened statutory period for reply of three (3) months. No extensions of time under the provisions of 37 CFR 1.136(a) were obtained. Accordingly, the above-identified application became abandoned on October 9, 2002.

The first petition fee is unnecessary. Therefore, a refund of \$650.00 is being credited to Deposited Account No. 50-2664.

A Notice Regarding Rescission of Nonpublication Request projected publication date will be mailed under separate cover.

Any inquiries concerning this decision may be directed to the undersigned at (703) 306-5685.

The application is being forwarded Technology Center AU 2877.

Wan Laymon
Wan Laymon
Petitions Examiner
Office of Petitions
Office of the Deputy Commissioner
for Patent Examination Policy



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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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US 26 2004

Applicant(s): Thomas W. Hagler
Assignee: Advanced Photometrics
Title: Method and Apparatus for Radiation Analysis and Encoder
Application No.: 09/848,614 Filing Date: May 3, 2001
Examiner: Unknown Group Art Unit: 2877
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San Francisco, California
May 13, 2004

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Franklin Dyer

Mail Stop Petitions
COMMISSIONER FOR PATENTS
P. O. Box 1450
Alexandria, VA 22313-1450

**DECLARATION OF JAMES S. HSUE IN SUPPORT
OF PETITION TO APPLY FOR PATENT UNDER 37 C.F.R. §1.137(b)**

Sir/Madam:

I, James S. Hsue, hereby declare as follows:

1. I am Patent Counsel representing Advanced Photometrics, Inc., the owner of the above-identified application. On May 3, 2001, I mailed the above-referenced application to the United States Patent and Trademark Office for filing.
2. Pursuant to a Revocation of Power of Attorney and Appointment of New Attorney signed on March 21, 2002, power of attorney to me was revoked and granted instead to Mr. L. Lester Wallace.
3. Pursuant to a Power of Attorney by Assignee of Entire Interest signed on January 15, 2003, power of attorney to Mr. L. Lester Wallace was revoked and granted back to me.

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4. The law firm Skjerven Morrill LLP where I was employed in January 2003 ceased doing business in February 2003, and I together with other attorneys from Skjerven Morrill LLP formed our present firm Parsons Hsue & de Runtz LLP, which required intense efforts on our part for several months.

5. As a result of the "Clarification of the United States Patent and Trademark Office's Interpretation of the Provisions of 35 U.S.C. §122(b)(2)(B)(ii) - (iv)", dated June 5, 2003, a number of applications handled by our firm were reviewed in connection with a general review of U.S. applications for which non-publication requests have been made and for which corresponding foreign applications have been filed. In August 2003, I filed for the above-identified application a PETITION FOR REVIVAL UNDER 37 C.F.R. §1.137(f) OF AN APPLICATION FOR PATENT CONSIDERED BY THE OFFICE TO BE ABANDONED FOR FAILURE TO NOTIFY THE OFFICE OF A FOREIGN OR INTERNATIONAL FILING because of an international filing on March 6, 2003. As a result of the general review referred to above, I discovered that the above-referenced application was abandoned due to a failure to respond to an office action mailed on July 8, 2002 to Mr. Wallace.

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7. Upon my review of the office action in January 2004, on its face, the action listed Serial No. 09/844,861 by applicant Padrigaru et al. Since this did not match the serial number and applicant of the above-identified application, I took no action to respond to the action. After a number of attempts, I spoke with Ms. Smith on February 17, 2004, who explained that the wrong serial number and applicant name were listed, but that the office action was the correct one.

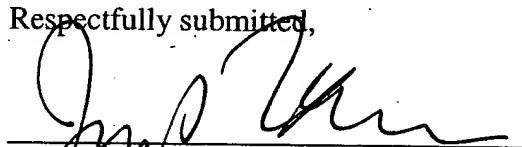
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9. Therefore, I believe that the entire delay in filing the required response until today's date is unintentional.

Date: May 13, 2004

Respectfully submitted,


James S. Hsue
Reg. No. 29,545

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